

## **REMARKS**

Claims 1-8 and 15-25 were pending in the application. Claim 16 has been amended. New claims 26 - 37 have been added. Applicant has canceled claims 1-8, 15, and 20-25. Applicant respectfully requests reconsideration of the now pending claims 16-19, and 26-37. Support for the claim amendment and new claims can be found at paragraphs [0051] through [0065] of Applicant's disclosure. No new matter has been added to the claims.

## **CLAIM REJECTIONS UNDER 35 USC § 102**

The Office Action finally rejected claims 1-8 and 15-25 under 35 USC 102(e) as being anticipated by US Patent number 7,080,371 issued to Arnaiz.

Claim 1 has been rewritten as new claim 26. Claims 6 and 7 have been rewritten as new claims 30 and 31. As to new claim 26, it is not anticipated by Arnaiz because Arnaiz simply teaches a method of propagating software upgrades. Arnaiz at col 2, lines 35-36: "Our invention provides software version upgrades and database schema synchronization." Arnaiz at col. 2, lines 50-52: "One aspect of our invention is a method of distributing and instantiating software version upgrades in a distributed computing environment."

In Arnaiz, a "version upgrade kit" is created containing an upgrade wizard and software upgrades. Arnaiz's kit is distributed to clients by downloading them onto the client during docking with the server computer. The client computer then invokes the upgrade wizard. Arnaiz, col. 2, lines 59-61: "Copies of the upgrade kits are downloaded to clients to be upgraded; and the software on the client is upgraded." Also see Arnaiz at col. 22, line 30 through col. 23,

line 21. Arnaiz does **not** provide for server configuration, much less synchronizing application versioning with server configuration to guarantee that the correct version of an application is always executed on a server properly configured to run that version of the application.

Further, the Office Action did not provide the details required for an anticipation rejection. "A rejection for anticipation under section 102 requires that each and every limitation of the claimed invention be disclosed in a single prior art reference." Karsten Manufacturing Corp. v. Cleveland Golf Co., 242 F.3d 1376, 1383 (Fed. Cir. 2001).

Anticipation requires the presence in a single prior art disclosure of all elements of a claimed invention **arranged as in the claim**. *Soundscriber Corp. v. U.S.*, 360 F.2d 954, 960, 148 USPQ 298 , 301 [175 Ct. Cl. 644 ] (1966). *See also Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1462, 221 USPQ 481, 489 (Fed. Cir. 1984). A prior art disclosure that "almost" meets that standard may render the claim invalid under § 103; it does not "anticipate." *Jamesbury Corp. v. Litton Industrial Products, Inc.* 756 F.2d 1556 (Fed. Cir. 1985). To anticipate a claim, a reference must disclose every element of the challenged claim **and enable one skilled in the art to make the anticipating subject matter**. *Chester v. Miller*, 906 F.2d 1574, 1576 n.2, 15 USPQ2d 1333, 1336 n.2 (Fed. Cir. 1990); *In re Donohue*, 766 F.2d 531, 533, 226 USPQ 619, 621 (Fed. Cir. 1985).

Claim 1, rewritten as new claim 26, contains the following elements:

providing to a server configuration versioning tool for storing in a data repository comprising multiple versions of both the application and the server configuration data required to run on a plurality of servers: at least one server configuration file comprising server configuration data and application association data comprising a list of all applications installed

on the server as well as versions of the server to which the applications are associated; wherein the providing step is responsive to creation or modification of a server configuration file;

receiving a request to select one or more server configuration files stored within the data repository, the request comprising data associated with an application which is to be transferred to at least one server on at least one platform;

retrieving a latest version of the at least one server configuration file associated with the application to be transferred;

bundling the application and the latest version of the at least one server configuration file into a single package comprising data to configure the at least one server for running said application on the at least one platform;

transferring to the at least one server the single package; and

configuring the at least one server with the server configuration data from the latest version of the server configuration file.

Arnaiz does not teach *any* of the steps of claim 26. Arnaiz neither teaches nor suggests a package comprising server configuration data comprising data to configure each of said servers for running said application. Arnaiz's "kit" is not analogous to the package of claim 26. The package contains the application to be executed, along with the corresponding version of the server configuration file or files necessary to correctly configure the server to run that version of the application. Arnaiz's kit, a software upgrade kit, contains a table and upgrade files and is executed by an upgrade wizard invoked by the server. See Arnaiz, col. 6, lines 39-40 and col. 5, lines 40-43. Arnaiz, in contrast to the claimed invention, does not synch user application versions with server configuration versions.

Moreover, Arnaiz neither teaches nor suggests associating a server configuration **with an application**. The final Office Action contends that Arnaiz at col. 22- , "fairly suggest

package comprising server configuration data.” Not only does Arnaiz **not** suggest such a package, but Applicant respectfully reminds the Examiner that for purposes of an anticipation rejection the prior art must do more than suggest; it must enable the claimed feature. See *Soundscriber, supra*.

Claim 1 is a method claim and in order to anticipate claim 1 a prior art reference would have to teach or enable the claimed method steps. The Office Action cites a computing system claim (claim 6 of Arnaiz) for the limitation of : “transferring to each of said plurality of servers the single version of a package, said package comprising said application and server configuration data, said server configuration data comprising data to configure each of said servers for running said application.” That cited portion is not legally sufficient to make a *prima facie* case of anticipation. *Los Alamitos Sugar Co. v. Carroll*, 173 F. 280 (9<sup>th</sup> Cir. 1909)(it is not sufficient to constitute anticipation that the devices relied upon might, by a process of modification, reorganization or modification with each other be made to accomplish the same function as the claims at issue).

Claims 2-5 have been canceled, thus mooted their rejection.

Claims 6 and 7 have been rewritten as new claims 29 and 30. These claims are not anticipated by Arnaiz at least by virtue of their dependence on claim 26.

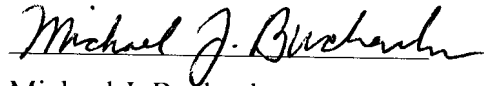
Independent claim 16 comprises the same limitations as claim 26 and is therefore not anticipated by Arnaiz for at least the same reasons that claim 26 is not anticipated by Arnaiz.

Claims 17-19 are not anticipated by Arnaiz by virtue of their dependence on claim 16.

Claims 20-25 have been canceled, thus mooted their rejections.

For the foregoing reasons, Applicant respectfully requests allowance of the pending claims.

Respectfully submitted,

A handwritten signature in cursive script, reading "Michael J. Buchenhorner", written in black ink.

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